

RODOBALDO GANDICELA, PETITIONER VS. DEOGRACIAS LUTERO, JUDGE OF MUNICIPAL COURT, ILOILO CITY, RESPONDENT.

G. R. No. L-4069. March 05, 1951

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for certiorari and mandamus filed by the petitioner against the respondent judge of the Municipal Court of the City of Iloilo.

The petitioner was charged with the crime of serious physical injuries in an information filed by the Ctiy Fiscal of Iloilo on May 12, 1950. When the trial of the case was finally set on July 17, 1950, "the City Fiscal appeared for the prosecution and informed the court that there was a private prosecutor authorized to present the case in court, and that he is not ready to enter into trial for Fiscal Dagway is the one handling this case, who is at present appearing in the Court of First Instance of Iloilo." The court, "taking into consideration that Attorney Mapa has not entered his appearance in this case and that this case has been dragging along for so many weeks, today being the last day set for trial, hereby orders that this case be dismissed without prejudice on the part of the City Fiscal, City of Iloilo, to file another information, with costs de oficio."

The petitioner contends that "The dismissal of the case without prejudice by the respondent judge upon the failure of the prosecution to enter into trial violates the constitutional right of your petitioner to a speedy trial; the respondent judge ought to have dismissed the case definitely;" and alleges "That there is no appeal nor any plain speedy and adequate remedy in the ordinary course of law from the aforementioned order of the respondent judge, except the petition for certiorari and mandamus."

On September 4, 1950, the Supreme Court ordered "The respondent in case L-4069 (Rodolfo Gandicela vs. Hon. Deogracias Lutero, etc.) to answer the petition in ten days from receipt of copy thereof."

The respondent Municipal Judge Deogracias Lutero filed his answer alleging "that the order of dismissal by the respondent on July 17, 1950 is in accordance with the petition of the petitioner through his counsel, Attys. Puig and Penaredondo, who appeared for the petitioner as accused in criminal case No. 6394;" that "the order of dismissal without prejudice is in accordance with the circumstances of the case and the protection of the rights of the accused to an immediate and speedy trial which the law sanctions;" and "that the remedy is an appeal to the Court of First Instance if any for the order of dismissal."

The petitioner does not deny in his reply that the dismissal of the case against him was ordered by the respondent in accordance with the petition of the petitioner's counsel, although said counsel filed afterwards a motion for reconsideration of said order praying that the dismissal be definite instead of without prejudice, which motion for reconsideration was denied by the respondent.

After considering the petition of the petitioner and the answer of the respondent, we are of the opinion, and so hold, that neither certiorari nor mandamus lie in the present case. Not mandamus, because the respondent judge in

ordering the dismissal of the case without prejudice, did not unlawfully neglect the performance of a ministerial act or an act which the law specifically enjoined him to do so as a duty resulting from his office, since the respondent could either grant or refuse to grant the petition of the attorneys for the petitioner to have the case dismissed. And not certiorari, because the respondent judge did not act without jurisdiction or in excess thereof, in dismissing without prejudice the criminal case No. 6349 against the petitioner, for the simple reason that the Municipal Court of Iloilo, presided over by the respondent, had jurisdiction to dismiss or not to dismiss the case and postpone the trial thereof to another date; and if the municipal court had jurisdiction to dismiss the case definitely as contended by the petitioner, it had also jurisdiction to dismiss the case "without prejudice on the part of the city fiscal to file another information," because a court having jurisdiction to decide a legal question correctly or in conformity with the law, does not lose its jurisdiction if the court decide erroneously against or not in accordance with the law. The existence and subsistence of the court's jurisdiction does not depend upon the correctness of the court's resolution. And lastly, the respondent judge could not have acted with grave abuse of discretion, because the court or judge has no discretion but must follow the law in dismissing definitely or without prejudice a criminal case against a defendant.

Besides, the respondent judge, in dismissing the case without prejudice on the part of the fiscal to file another information, has acted, not only within the court's jurisdiction, but correctly, because the case was dismissed with the express consent of the accused or petitioner, who moved through his counsel for the dismissal of the case. If the defendant or petitioner did not move for the dismissal and the respondent dismissed the case, the dismissal would be definite or a bar to another prosecution for the same offense, even if the court or judge erroneously states in the order of dismissal that it be without prejudice on the part of the city fiscal to file another information, because the court can not change the nature and legal effects of such dismissal, and the petitioner can not be prosecuted again for the same offense. But where a defendant expressly consents to, by moving for, the dismissal of the case against him, as in the present case, even if the court or judge states in the order that the dismissal is definite or does not say that the 'dismissal is without prejudice on the part of the fiscal to file another information, the dismissal will not be a bar to a subsequent prosecution of the defendant for the same offense. (People vs. Ylagan, 58 Phil., 851; People vs. Salico, 84 Phil., 722.)

In view of the foregoing, the petition is denied or rather dismissed without pronouncement as to costs. So ordered. Moran, C. J., Pablo, Padilla, Timson, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

RESOLUTION

May 21, 1951

FERIA, J.:

This is a motion for reconsideration of the decision of this Court denying the petition for certiorari of the movant.

One of the grounds on which the motion is based is that the statement of the respondent judge in his answer to the petition for certiorari, "that the dismissal of the case was ordered by the respondent in accordance with the petition of the petitioner's counsel" is not true, since it is not stated in said order of dismissal of July 17, 1950. The mere omission to state expressly in said order whether the dismissal is ordered by the Court *motu proprio* or upon the motion of one of the parties, does not necessarily mean that the petitioner's counsel did not ask for the dismissal of the case. Therefore, the statement in the respondent's answer, not denied by the petitioner in his reply, to the effect that the dismissal was ordered in accordance with the petition of the petitioner's counsel is controlling; and the petitioner's petition in this motion for reconsideration that he be allowed to amend his reply for the purpose of

alleging a denial of said statement is denied.

Another ground of the motion for reconsideration is that "even if it is assumed that the case was dismissed upon the instance of the petitioner, the dismissal ought to be one which is definite and not without prejudice," because this Court, in the case of *Kalaw vs. Provincial Fiscal of Samar et al.*, (64 Phil., 852) held that "the accused who is deprived of his constitutional right to a speedy trial has the right to ask that he be released if he were detained, or that the case against him be definitely dismissed."

In the resolution denying the appellant's motion for reconsideration in the case of *Francisco vs. Borja*, supra, p. 83 and in the decision in the present case, we held that courts have no discretion to determine or characterize the legal effects of their orders or decisions, unless expressly authorized by law to do so as provided for in Rule 30, Rules of Court.. The addition of such words as "without prejudice", "provisionally," or "definitely" to their order or decision would be a mere surplusage if the legal effect thereof under the law is otherwise, because courts cannot amend the law. So it is not for the court to state in the order or decision that the case is dismissed either definitely or without prejudice. The legal effect of a dismissal depends upon the stage of the trial and the circumstances under which a criminal case is dismissed.

According to Section 9 of Rule 13, if a criminal case is dismissed otherwise than upon the merits at any stage before judgment, without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information, and after the defendant has pleaded to the charge, the dismissal of the case shall be definite or a bar to another prosecution for the same offense; but if it is dismissed upon the petition or with the express consent of the defendant, the dismissal will be without prejudice or not a bar to another prosecution for the same offense, because, in the last case, the defendant's action in having the case dismissed constitutes a waiver of his constitutional right not to be prosecuted again for the same offense.

If the defendant wants to exercise his constitutional right to a speedy trial, he should ask, not for the dismissal but for the trial of the case. If the prosecution asks for the postponement of the hearing and the court believes that the hearing cannot be postponed anymore without violating the right of the accused to a speedy trial, the court shall deny the postponement and proceed with the trial and require the fiscal to present the witnesses for the prosecution; and if the fiscal does not or cannot produce his evidence and consequently fails to prove the defendant's guilt beyond reasonable doubt, the Court, upon the motion of the defendant, shall dismiss the case. Such dismissal is not in reality a mere dismissal although it is generally so called, but an acquittal of the defendant because of the prosecution's failure to prove the guilt of the defendant, and it will be a bar to another prosecution for the same offense even though it was ordered by the Court upon motion or with the express consent of the defendant, in exactly the same way as a judgment of acquittal obtained upon the defendant's motion (*People vs. Salico*, 84 Phil., 722).

Wherefore the motion for reconsideration is denied. So ordered.

Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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